IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 141 OF 2006
IN
WRIT PETITION NO. 1588 OF 2005

Shri Dattatraya J. Sathe] .. Appellant (Ori.Respondent)

Versus

The Secretary, Sairam Coop. Housing Society Ltd.] .. Respondent (Ori.Applicant)

Mr. M.S. Lagu for the appellant.

CORAM: R.M. LODHA &
S.J. VAZIFDAR, JJ.

DATED: 10TH JULY, 2006

P.C. :

. The appellant (hereinafter to be referred as "the Member") suffered Recovery Certificate under Section 101 of the Maharashtra Cooperative Societies Act on the application made by Sai Ram Cooperative Housing Society Limited (for short "the Society") for non payment of repair charges. The Certificate dated 11th May, 1998 issued by the Assistant Registrar under Section 101 of the Maharashtra Cooperative Societies Act was challenged by the Member by filing Revision Application in the month of August 2000 under Section 154 of the Maharashtra Cooperative Societies Act before

Divisional Joint Registrar, Cooperative Societies. The said Revision Application was dismissed by the Divisional Joint Registrar on 23rd July, 2001 and the Recovery Certificate dated 11th May, 1998 was confirmed. The Member then filed application seeking review of the order dated 23rd July, 2001 alongwith an application for condonation of delay. The Review Application was rejected as not maintainable on 28th December, 2004.

2. The Member then filed Writ Petition before this Court challenging the order dated 28th December, 2004 rejecting the Review Application, the order dated 23rd July, 2001 rejecting the Revision Application and the Recovery Certificate dated 11th May, 1998.

3. The learned Single Judge dismissed the Writ Petition by order dated 10th April, 2006. Aggrieved thereby, the Member has filed the Letters Patent Appeal.

4. The counsel for the appellant submitted that sub-section (2A) was inserted in Section 154 by Maharashtra Act No.41 of 2000 with effect from 23rd August, 2000 and the Revision having been filed earlier thereto, the order directing the Member to deposit 50% of the amount of total amount of recoverable dues for maintaining the Revision Application was not justified.

He submitted that sub-section (2A) of Section 154 is prospective in nature and could not have been made applicable to the Revision Application filed by the appellant.

5. The argument of the counsel does not appeal us at all. Sub-section (2A) that was inserted in Section 154 by Maharashtra Act No.41 of 2000 provides that no application for revision shall be entertained against the Recovery Certificate under Section 101 unless the applicant deposits with the concerned Society 50% amount of the total amount of recoverable dues. The Revision Application was entertained by the Revisional Authority on 28th August, 2000. Admittedly, by that time, sub-section (2A) had come into force with effect from 23rd August, 2000. The word "entertained" in sub-section (2A) is of significance and is in contradistinction to the expression "filed". What is provided by sub-section (2A) is that Revision Application against the Recovery Certificate shall not be entertained unless the 50% of the amount under the Certificate is deposited by the Revisionalist with the Society. It is when the Revisional Authority ordered admission of the Revision that the Revision Application is said to have been entertained and on that date provisions contained in sub-section (2A) had already

come into force. Therefore, the direction given by the Revisional Authority on 28th August, 2000 to the Member to deposit 50% of the amount of the Certificate issued under Section 101 with the Society cannot be said to unwarranted in law. Admittedly, the Member did not deposit the amount of 50% of the Certificate under Section 101 with the Society as directed in the order dated 28th August, 2000 and, therefore, the Revisional Authority cannot be said to have committed any error in rejecting the Revision Application on 23rd July, 2001. Since the order dated 23rd July, 2001 did not suffer from any error, the Review Application filed by the Member seeking review of the order dated 23rd July, 2001 was misconceived and no error can be said to have been committed by the rejection thereof vide order dated 23rd December, 2004.

6. Besides that, the learned Single Judge found that the Writ Petition suffered from laches and refused to entertain the Writ Petition on that ground. The counsel for the appellant did not explain the delay in filing the Writ Petition. Not only that even the Revision Application that was filed by the Member against the Recovery Certificate dated 11th May, 1998 suffered from delay and despite our repeated query, the counsel for the appellant could not show us the cause

that justified filing the Revision Application belatedly.

7. All in all, we are satisfied that no case for interference is made out in the impugned order. Letters Patent Appeal is dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.J. VAZIFDAR, J.]